

REMARKS

Claims 1-22 are cancelled.

Claims 23-44 are new and are directed to the previously presented subject matter of claims 1-22, respectively. However, claim 43 is now written in independent form. Accordingly, claims 23-44 are also readable on the previously elected species.

Support for the new claims may be found throughout the specification, for example, at page 4, lines 20-30, page 5, lines 3-15, page 5 line 33 to page 6, line 6, page 7, lines 12-14, and Figure 2.

The Official Action objected to claims 7, 8, 10, 11, 14-16, 18 and 20 for informalities.

Applicants acknowledge with appreciation the Examiner's suggested amendments. New claims 29, 30, 32, 33, 38, 40 and 42, which correspond to claims 7, 8, 10, 11, 16, 18 and 20 respectively, have been amended in a manner consistent with these suggestions. However, it is respectfully noted that claims 14 and 15 had referred to items (9) and (10) of Figure 2, respectively, not claims 9 and 10 as stated in the Official Action. Accordingly, new claims 36 and 37 refer to the active step to which items (9) and (10) refer.

Thus, the new claims are believed to be free of informalities.

Claims 1-22 were rejected under 35 USC §112, second paragraph, as being indefinite. This rejection is respectfully traversed for the reasons that follow below.

New claims 23-44 include language that is definite.

However, with respect to the "low percentage" of oxygen, as recited in claim 34, one of ordinary skill in the art would have understood this value, as evidenced by the great number of patents refer to a "low" content, amount or percentage of oxygen.

Therefore, the new claims are definite, and withdrawal of the rejection is respectfully requested.

Claims 1, 2, 5-6, 9, 12, 14-15, 18-20, and 22 were rejected under 35 USC §102 (b) as being anticipated by the Grape Seed Extract White Paper ("GSEWP"). This rejection is respectfully traversed for the reasons discussed below.

The claimed invention is directed to obtaining an extract possessing a low content of monomers. As discussed at page 4, lines 12-14 of the original specification, the methods of the prior art, however, result in an elevated monomeric fraction. The present invention, however, obtains a product having a high polyphenol content and low monomeric content as disclosed at page 4, lines 26-29, i.e., the monomeric content is lower than that of the polyphenol content as set forth in claim 23. Indeed, applicants have found that fermentation leads to higher monomer

content, which the claimed invention sets out to avoid, e.g., as also claimed in claim 23 and discussed on page 4, lines 20-29.

GSEWP, however, does not disclose a process of separating the seeds from the pomace, and subsequently extracting the product from the seeds, which leads to a product having a monomer content lower than the phenol content. Indeed, the focus of GSEWP is in obtaining a higher monomer content.

While GSEWP recognizes that fermented seeds lose their potency in extraction, GSEWP does not recognize that fermentation leads to a higher monomer content. Instead, GSEWP achieves a low level of monomers by a method other than that of the claimed invention, i.e., a new sequence of well-known operations disclosed in the background of the present invention.

Moreover, the extracts discussed by GSEWP with the lower levels of monomers, e.g., Example F, are not obtained by a process as claimed. GSEWP admits that the process is unknown.

Therefore, GSEWP does not anticipate the claimed invention.

Claims 1, 7, 9 and 21 were rejected under 35 USC §102 (b) as being anticipated by the LI et al. CN 1363363A ("LI"). This rejection is respectfully traversed for the reasons discussed below.

LI does not disclose a step of separating seeds from the pomace immediately after obtaining the pomace, e.g., as

recited in claims 23 and 43, nor does LI disclose the claimed product of claim 23.

Moreover, LI discloses extracts oil from seeds by employing a mixture ethanol:water which is 70:30, which is contrary to the mixture of the claimed invention, e.g., claim 32 recites a ratio of ethanol:water that is 30:70. Accordingly, the presently claimed ratio does not allow oil extraction, which can be performed either as in LI or with other solvents, but the claimed ratio does allow one to extract polyphenols, without oil.

Therefore, LI does not anticipate the claimed invention, and withdrawal of the rejection is respectfully requested.

Claims 1-3, 5-15, 17-20 and 22 were rejected under 35 USC §103 (a) as being unpatentable over the Grape Seed Extract White Paper ("GSEWP"), claims 1-3, 5-20 and 22 were rejected under 35 USC §103 (a) as being unpatentable over GSEWP, further in view of CUOMO et al. US 6,358,542 B2 ("CUOMO"), and claims 1-20 and 22 were rejected under 35 USC §103 (a) as being unpatentable over GSEWP in view of CUOMO, further in view of SCHULMAN et al. US 4,609,110 ("SCHULMAN"). These rejections are respectfully traversed for the reasons discussed below.

As discussed with respect to the anticipation rejection, GSEWP fails to disclose a process of separating the seeds from the pomace, and subsequently extracting the product from the seeds, which leads to a product having a monomer content

lower than the phenol content. Instead, GSEWP focuses on increasing the monomer content of the extract product using a different method.

Contrary to the assertion made in the Official Action, "temperature, humidity, ethanol-water ratio, drug-liquor ratio and pressure" are not result effective parameters "that a person of ordinary skill in the art would routinely optimize". That is, the result obtained by the claimed invention is quite different from that suggested by GSEWP, and unexpected.

For example, example F, which appears to suggest to a low monomer content and a high polyphenol content, GSEWP admits that is unknown how this is obtained. Thus, GSEWP fails to recognize the product as resulting from any particular process steps and/or parameters, and the claimed process steps and process parameters are not mere result effective parameters recognized by one of ordinary skill in the art.

Moreover, with respect to the use of organic cultivation, in particular, this use would not have been obvious, since there was no apparent reason why biologically agricultured seeds should lead to an extract having a lower monomer contents than the other seeds, from which extract product do not have a higher content of polyphenols.

Regardless of the ability of CUOMO and SCHULMAN to teach that for which they are offered, neither CUOMO nor SCHULMAN can remedy the shortcomings of GSEWP for reference purposes.

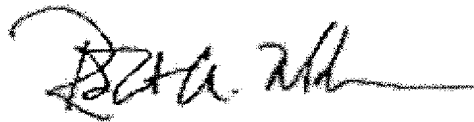
Therefore, the claims are not rendered obvious, and withdrawal of these rejections is respectfully requested.

In view of the amendment to the claims and the foregoing remarks, the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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